

LAW OFFICES OF WILLIAM C. REIL

BY: William C. Reil, Esquire

Identification No. 26833

42 S. 15th Street, Suite 210

Philadelphia, PA 19102

215-564-1635

ATTORNEY FOR PLAINTIFF

MARIA MAHMOOD

14717 Exbury Lane

Laurel, MD 20707

UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

vs.

NATIONAL BOARD OF
MEDICAL EXAMINERS

3750 Market Street

Philadelphia, PA 19104

2:12-cv-01544-TR

JURY TRIAL DEMANDED

**PLAINTIFF'S SURREPLY MEMORANDUM OF LAW TO DEFENDANT'S
REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS
AND/OR SUMMARY JUDGMENT**

Plaintiff, Maria Mahmood, through her undersigned counsel, hereby answers defendant's reply memorandum. It is noted that this memorandum is directed at selected issues raised by defendant, in its reply brief, and is not addressed to all issues in the litigation.

The ADA Issue

Defendant misconstrues the facts under the ADA cause of action. Maria Mahmood had a history of difficulty in dealing with Prometric, the agent used by the NBME to administer the USMLE. Attached, as Exhibit "A", are a series of emails between the parties. These emails indicate that the failure to reasonably accommodate the disability of Ms. Mahmood with regard to her legal blindness was a longstanding problem. These emails further document that there has been a course of conduct by defendant and its agents which discriminated against plaintiff under the ADA.

Factual Issues

Defendant attempts to enlarge the incident involving plaintiff on the date in question. In point of fact, there was no damage and no disruption whatsoever to the USMLE. There was no evidence that anyone taking the test was even aware of anything amiss. Defendant insists on referring to this situation as arson, which distorts what actually occurred.

Evidence would show that Ms. Mahmood always kept cleaning alcohol wipes in a small container to clean her monocular, which was necessary for her limited vision. There is no evidence that the fire department was needed. No fire needed to be extinguished.

Procedural Issues

It is black-letter law that a motion to dismiss should be decided on the sufficiency of the complaint only. The defendant has submitted a plethora of documents as exhibits to their filings, most of which are not contained in the complaint. Even if the Court has discretion to view the pleadings from the summary judgment perspective, it would be unwise to do so, because there are a number of factual issues in dispute which need to be vetted through discovery.

Irreparable Harm and Public Interest

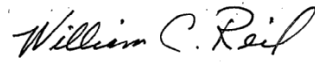
There can be little dispute that plaintiff would suffer irreparable harm under the status quo. At the behest of the NBME, she was not only barred from taking further examinations, but dismissed from her medical school. Since plaintiff cannot now finish her medical degree within a 7-year time frame, the actions of the NBME constitute a lifetime bar. This would surely amount to cruel and unusual punishment. It would be in

the public interest to assure that a person such as plaintiff, who is qualified to be a physician, is allowed to proceed with her career.

Finally, it is noted that no one questions the knowledge or technical ability of Ms. Mahmood in the medical field. She not only overcame her physical limitations, but demonstrated the knowledge required to be an excellent physician.

WHEREFORE, plaintiff submits that defendant's motions should be denied.

Respectfully submitted,

A handwritten signature in black ink, reading "William C. Reil". The signature is written in a cursive, flowing style.

William C. Reil, Esquire
Attorney for Plaintiff
06/13/12

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached document (s) was served upon all other parties or their counsel of record by:

X

_____ Regular First Class Mail

_____ Facsimile

_____ Certified Mail

_____ Hand-Delivered

X

_____ Electronic Filing

William C. Reil

William C. Reil, Esquire
Attorney for Plaintiff
42 S. 15th Street, Suite 210
Philadelphia, PA 19102
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